



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

DEON D. JENKINS,	§	
	§	
PLAINTIFF,	§	
	§	
vs.	§	CIVIL ACTION NO. 0:04-1470-HFF-BM
	§	
LANCASTER COUNTY SHERIFFS DEPT.	§	
AND DETENTION CENTER;	§	
JAIL ADMINISTRATOR, DEBBIE HORNE,	§	
SHERIFF JOHNNY CAUTHEN, OFC. JAMES	§	
WHITAKER, OFC. STACY ROBERTS	§	
in their official and individual	§	
Capacity,	§	
	§	
DEFENDANTS.	§	

---

---

ORDER ADOPTING THE REPORT AND RECOMMENDATION OF THE  
MAGISTRATE JUDGE AND DISMISSING THE CASE WITHOUT PREJUDICE

---

---

Plaintiff has filed a *pro se* complaint against Defendants under 42 U.S.C. §1983. This matter is before the Court for review of the United States Magistrate Judge's report and recommendation (report), made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 DSC.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *See Matthews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a *de novo* determination of those portions of the report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Magistrate Judge Bristow Marchant filed a detailed and comprehensive report on May 14, 2004, recommending that Plaintiff's Complaint be summarily dismissed without prejudice. Plaintiff timely filed objections on June 2, 2004. In Plaintiff's objection, an assertion was made as to a violation of S.C. Code §24-3-80 with regard to his transfer from Lancaster County to the S.C. Department of Corrections. Inasmuch as this was the first mention of an alleged violation of this statute, the Magistrate Judge at the direction of undersigned filed an Order directing the Attorney General of South Carolina to submit documentation as to what procedures were followed at the time of Plaintiff's transfer. The Office of the Attorney General timely complied with Magistrate Marchant's order. Thereafter, on July 30, 2004, Plaintiff filed a Reply to the submission of the Attorney General. All of these filings and submissions have been reviewed by this Court.

Plaintiff's original Objection to Report and Recommendation primarily alleged a violation of S.C. Code §24-3-80 to which an investigation was made into the procedure undertaken. The undersigned is satisfied with the completeness and propriety of the transfer process. Plaintiff's subsequent Reply filed on July 30 alleged that certain documents were not included in the Attorney General's file relating to the transfer. However, this Court deems the documentation concerning the transfer to be adequate and complete and in compliance with S.C. Code §24-3-80. Accordingly, Plaintiff's objections as to those documents are overruled. This Court, having reviewed the objections that Plaintiff raised as well as the Reply later filed by Plaintiff finds them to be without merit. Furthermore, the Court agrees with the analysis and conclusion of the Magistrate Judge that Plaintiff has failed to set forth a claim against Defendants upon which relief can be granted.

Therefore, after a thorough review of the report and the objections pursuant to the standard set forth above, and in light of the above analysis, it is **ORDERED** that the objections be overruled, the report be adopted, and Plaintiff's Complaint be **DISMISSED WITHOUT PREJUDICE** and that this dismissal shall be deemed a "strike" under the three strikes rule of 28 U.S.C. §1915(g).

**IT IS SO ORDERED.**

Signed this 17<sup>th</sup> day of June, 2005, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

**NOTICE OF RIGHT TO APPEAL**

\_\_\_\_\_Petitioner is hereby notified that he has the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.